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**From:** Montgomery, Delores (DEQ) [<mailto:MONTGOMERYD1@michigan.gov>]

**Sent:** Wednesday, October 30, 2013 4:49 PM

**To:** Cisneros, Jose

**Cc:** Mangino, Mario; Olsberg, Colleen; Sundar, Bhooma; Rudloff, Gregory; Little, Paul; Ramanauskas, Peter; Moore, Tammy; [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov); Himich, Virginia (DEQ); Schinderle, Jack (DEQ); Slayton, David (DEQ); [brownee@michigan.gov](mailto:brownee@michigan.gov); Tyson, Kimberly (DEQ); Craig, John (DEQ); Arrazola, Ignacio; Gonzalez, Maria; Victorine, Gary; Wagner, Robert (DEQ); Blayer, Ronda (DEQ)

**Subject:** RE: Michigan Corrective Action MOU Notification; Requests for Review

Joe,

We would like to thank you and your staff for providing the preliminary comments on October 25, 2013. The timing was very helpful as additional statutory changes to Part 201 are being drafted.

For convenience we wanted to share track changes versions of the bills for the 2010 and 2012 amendments so you and your staff can see the specific language changes (attached).

Below is the announcement of the public hearing for the cleanup criteria rules with all comments due by 5 pm on November 13, 2013. Further below is a notification to the stakeholder group regarding the cleanup criteria rules that includes a description of the changes made to these rules from those promulgated in 2002 and information on the reengaging the stakeholders in 2014.

We are providing this information to you in accordance with the November 3, 2000, Memorandum of Understanding (MOU) and April 15, 2002, Technical Agreement (TA) to notify you of changes to Part 201 that may affect the use of Part 201 cleanup criteria for Part 111/RCRA corrective action.

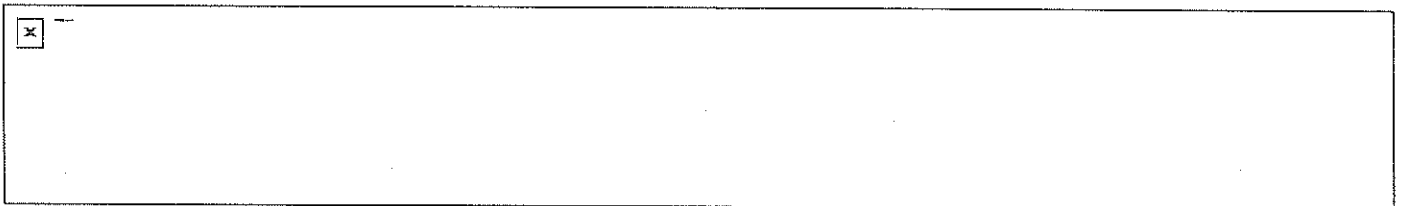
Please contact Deb MacKenzie-Taylor at 517-2846563 or [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov) if you have any questions, or you may contact me.

DeLores (De) Montgomery, Chief  
Hazardous Waste Section  
Office of Waste Management and Radiological Protection  
Michigan Department of Environmental Quality  
PO Box 30241  
Lansing, MI 48909-7741


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525 West Allegan Street  
Lansing, MI 48933  
517-373-4797(fax) *Effective August 12, 2013 my new number is (517) 284-6565*  
[montgomeryd1@michigan.gov](mailto:montgomeryd1@michigan.gov)

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**From:** Michigan Department of Environmental Quality [<mailto:MIDEQ@govsubscriptions.michigan.gov>]  
**Sent:** Friday, October 25, 2013 4:49 PM  
**To:** MacKenzie-Taylor, Deb (DEQ)  
**Subject:** Notice of Public Hearing - Cleanup Criteria Rules



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## **MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY REMEDATION AND REDEVELOPMENT DIVISION**

### **NOTICE OF PUBLIC HEARING**

The Michigan Department of Environmental Quality (MDEQ), Remediation and Redevelopment Division (RRD), will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The rules are identified as R 299.1 – R 299.50. The purpose of the rules is to implement the December 2012 amendments to the NREPA. The MDEQ is required to evaluate and revise the cleanup criteria established under Section 20120a of the NREPA by December 31, 2013.

The public hearing will be held on Wednesday, November 13, 2013, from 2:30 p.m. until 4:30 p.m., in the Con Con Conference Room on the Atrium Level, Constitution Hall, 525 West Allegan Street, Lansing, Michigan.

Copies of the proposed rules (ORR 2013-056 EQ) can be downloaded via the Internet through the Office of Regulatory Reinvention at [www.michigan.gov/orr](http://www.michigan.gov/orr). Copies of the rules may also be obtained by contacting the Lansing Central Office at:

Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Phone: 517-284-5141  
Fax: 517-241-9581  
E-Mail: [reisnerr@michigan.gov](mailto:reisnerr@michigan.gov)

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on November 13, 2013.

Persons needing accommodations for effective participation in the meeting should contact the RRD at 517-284-5141, one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, Michigan Compiled Laws (MCL) 24.241 and 24.242. Administration of the rules is by authority conferred on the Director of the MDEQ by Sections 20104(1) and 20120a(18) of the NREPA, MCL 324.20104(1) and 324.20120a(18). These rules will become effective immediately after filing with the Secretary of State.

Robert Wagner, Chief  
Remediation and Redevelopment Division

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For questions regarding web navigation and this electronic mailing list, please contact Susan Norton, Remediation and Redevelopment Division, DEQ: [nortons1@michigan.gov](mailto:nortons1@michigan.gov), or (517)284-5136.

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This email was sent to [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov) using GovDelivery, on behalf of: Michigan Department of Environmental Quality · Constitution Hall · 525 West Allegan Street · PO Box 30473 · Lansing, MI 48909 · 800-662-9278

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Dear Cleanup Criteria Stakeholder,

We are pleased to let you know that the Remediation and Redevelopment Division (RRD) has sent to the Office of Regulatory Reinvention (ORR) a draft rule package! The link to view the proposed rules is [http://www7.dleg.state.mi.us/orr/Files/ORR/1232\\_2013-056EQ\\_orr-draft.pdf](http://www7.dleg.state.mi.us/orr/Files/ORR/1232_2013-056EQ_orr-draft.pdf).

We appreciate your efforts over the last year to participate in stakeholder meetings and provide your comments on various versions of draft rules. A summary of the updates included in the proposed rules as submitted to the ORR are

listed below. In general, the proposed rules are consistent with the existing criteria that have served the regulated community, environmental practitioners, and the public health sector for the past 12 years.

The RRD plans to re-engage with stakeholders in 2014 to:

- Update exposure assumptions;
- Evaluate toxicity inputs;
- Consider the vapor intrusion pathway and related equations to calculate criteria;
- Discuss the generic assumptions that go into the risk analysis; and
- Develop a process that will provide a clear and regular method for updating the criteria on a go-forward basis.

We anticipate a public hearing for the proposed rule package in mid-November, and we remain confident that the proposed rules will be promulgated by Jan 1, 2014.

The proposed rules include the following updates:

- Rule numbers assigned are R 299.1 through R 299.50
- The land use categories are updated to include 'residential' and 'nonresidential'. The terms 'industrial', 'commercial', and 'recreational' have been eliminated, consistent with the amended Part 201.
- The term 'remedial actions' is changed to 'response activities' where appropriate.
- References to the development of site-specific criteria of Part 201 (20120a(2)) were updated to include 20120b.
- Rule 732, site-specific cleanup criteria, was rescinded with the June 2012, amendments.
- The Part 5 Rules, Response Activities, and the Part 1 Rules, General Provisions, will also be rescinded at the end of 2013. Portions of these rules which are relevant to the cleanup criteria were incorporated into the proposed rules.
- Definitions and rules that were incorporated into Part 201 through previous amendments to Part 201 were not included in the proposed rules. (This includes definition of background concentration, target detection limits (R 5707 and R 5742)), and indoor air regulated under MIOSHA (R 5714(6) and R 5724(6)).
- Rule 712, generic cleanup criteria for groundwater based on human dermal contact with groundwater, is not included in the proposed rules. The resulting criteria for this pathway generally had no impact on the facility status of a site or the required response activities.
- The Acute Inhalation Screening Levels (AISLs) have been deleted from Table 1. The AISLs were only applicable to a limited exposure scenario (where a person working in a trench or excavation and breathing contaminant vapors volatilizing from infiltrated groundwater). Workers in these situations are protected via MIOSHA regulations, and firms engaged in this type of work employ on-site real time air monitors to ensure worker safety. For these reasons, the column has been deleted.
- The pathways based on hazardous substance vapors emanating from groundwater and soil to indoor air (GVIIC and SVIIC) remain in the proposed rules. The ability to utilize soil gas to demonstrate compliance with GVIIC and SVIIC remains an option (R 12(5) and R 22(5)).
- The Fire and Explosion Screening Level for dissolved methane in groundwater has been updated.
- The residential sodium criterion for groundwater has been changed to 230mg/l.

- Rule 716, cleanup criteria for groundwater based on protection of surface water resources from hazardous substances in venting groundwater, was rescinded with the June 2012 amendments. As a result, rules specific to groundwater venting into surface water were not included in the proposed rules.
- The definition of  $C_{sat}$  was updated consistent with terminology in Part 201. The risk-based criteria are not appropriate where free-phase liquid is present, and additional response activities may be required. (Modifications were made to R 299.1(j) definition; R 6(2)(a) generic criteria generally; 18(2) soil criteria generally; and 49(c) Footnote to Tables 2 and 3.) The  $C_{sat}$  values currently in the soil criteria tables was replaced with the risk-based value. The (C) footnote remains in the tables for those substances with risk-based values greater than the  $C_{sat}$  concentration for that specific hazardous substance.
- The three criteria tables remain a part of the rules, as does Table 4, Toxicological and Physical-Chemical Properties. The values in these tables are consistent with the September 28, 2012, version of the criteria tables. The original values promulgated in 2002, remain the same, except for the following situations:
  - a) For substances not listed in the promulgated rules, the DEQ can determine if the substance is hazardous using the best available information and use that information to develop cleanup criteria (R 299.5706a(10)). As a result, some new hazardous substances and related criteria have been added.
  - b) For substances listed in the promulgated cleanup criteria tables and designated "ID" (insufficient data) or "NA" (not available) for specific criteria or chemical-specific information, the DEQ can use the best available information when it becomes available to generate those cleanup criteria (R 299.5706a(11)). As a result, some new toxicity endpoints and related criteria have been added.
  - c) If a new state drinking water standard is established or an existing state standard is changed, the drinking water standard became the generic drinking water criterion (R 299.5706a(12)). The drinking water criterion for arsenic has been updated to reflect the new standard.
  - d) Pursuant to the December 2010, amendment to Part 201 (20120e(1)(a)), the Part 31 Water Quality Standards became the GSI Criteria. Any time a Rule 57 Water Quality Standard value is modified, the Groundwater Surface Water Interface (GSI) criterion becomes the Water Quality Standard value. As a result, some of the GSI criteria have been updated.

These new criteria were published and announced by the DEQ pursuant to R 299.5706a(13).

We thank you for your participation in this process, and your commitment to environmental stewardship.

Sincerely,

Bob Wagner

*Sarah Sackrider*

Senior Executive Management Assistant to Robert Wagner, Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
( 517.284.5144  
E-mail: [sackriders@michigan.gov](mailto:sackriders@michigan.gov)

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**From:** Cisneros, Jose [<mailto:Cisneros.Jose@epa.gov>]

**Sent:** Friday, October 25, 2013 4:12 PM

**To:** Montgomery, Delores (DEQ)

**Cc:** Mangino, Mario; Olsberg, Colleen; Sundar, Bhooma; Rudloff, Gregory; Little, Paul; Ramanauskas, Peter; Moore, Tammy; MacKenzie-Taylor, Deb (DEQ); Himich, Virginia (DEQ); Schinderle, Jack (DEQ); Slayton, David (DEQ); Browne, Elizabeth (DEQ); Tyson, Kimberly (DEQ); Craig, John (DEQ); Arrazola, Ignacio; Gonzalez, Maria; Victorine, Gary

**Subject:** RE: Michigan Corrective Action MOU Notification; Requests for Review

Hi, De—

Thank you for email, notifying us of the changes to the Michigan Part 201 cleanup criteria and processes.

As requested, we have reviewed the materials you provided to us and assessed them based on our federal program requirements and policy. We have developed the comments found in the attachment. Please note that Region 5's comments are preliminary in nature given the time constraints involved and are based solely on the summary information provided by MDEQ. The Region has not yet reviewed the actual state statutory and regulatory language. In addition, the Region's preliminary review and comment do not supplant any required authorization process to the extent applicable.

Please feel free to contact us with questions on our comments and with any additional materials/information that you would like us to review on this subject.

Sincerely,

Joe

Jose Cisneros, Chief  
Remediation and Reuse Branch  
Land and Chemicals Division  
EPA Region 5  
312-886-6945

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**From:** Montgomery, Delores (DEQ) [<mailto:MONTGOMERYD1@michigan.gov>]

**Sent:** Tuesday, September 24, 2013 2:16 PM

**To:** Cisneros, Jose

**Cc:** Mangino, Mario; Olsberg, Colleen; Sundar, Bhooma; Rudloff, Gregory; Little, Paul; Ramanauskas, Peter; Moore, Tammy; [mackenzie-taylor@michigan.gov](mailto:mackenzie-taylor@michigan.gov); Himich, Virginia (DEQ); Schinderle, Jack (DEQ); Slayton, David (DEQ); [brownlee@michigan.gov](mailto:brownlee@michigan.gov); Tyson, Kimberly (DEQ); Craig, John (DEQ)

**Subject:** Michigan Corrective Action MOU Notification; Requests for Review

**Importance:** High

Joe-

This email is intended to do three things:

- 1) Notify EPA of significant changes to the laws, regulations and guidance, and practices that impact the Part 201 clean-up criteria and processes with respect to their application to RCRA/Part 111 corrective action sites;
- 2) Request EPA review, by October 7, 2013, of the statutory changes to Part 201 and identification of issues of concern related to the application of Part 201 to RCRA/Part 111 corrective action;
- 3) Provide an update on the Part 201 rules process and request EPA's review and evaluation of the proposed Part 201 draft cleanup criteria rules for continued use at RCRA corrective action sites in Michigan. The rules are not yet available but may become available later this year.

## Notification

In accordance with the November 3, 2000, Memorandum of Understanding (MOU) and April 15, 2002, Technical Agreement (TA) this e-mail is to notify you of statutory changes to Part 201 that affect the use of Part 201 cleanup criteria for Part 111/RCRA corrective action.

The MOU and TA can be found at: [http://michigan.gov/deq/0,4561,7-135-3312\\_4118\\_4240-56396--00.html](http://michigan.gov/deq/0,4561,7-135-3312_4118_4240-56396--00.html)

Amendments to the Part 201 statute were made in 2010 and 2012 that change the application of some cleanup criteria and rescind the current cleanup criteria rules as of December 31, 2013. This notification summarizes some of the key statutory changes that influence the application of the cleanup criteria to Part 111/RCRA corrective action projects. Attachment A (below) provides a detailed outline of the statutory changes to Part 201 that influence Part 111/RCRA corrective action (including citations).

The most important Part 201 statutory changes that influence Part 111/RCRA Corrective Action include:

- Allowing compliance with indoor air criteria through compliance with occupational health regulations (MIOSHA) when the site is a manufacturing facility (North American Industry Classification System Sectors 31-33) and the MIOSHA regulation(s) are applicable to the exposure to the hazardous substance(s) including, but not limited to, the occupational health standards for air contaminants and hazard communication requirements. We understand that this is different from the approach that was previously discussed with EPA which was to only use occupational exposure limits for the Human Exposures Controlled Environmental Indicator, not for final corrective action or closure.

We need to know if the 201 change will be acceptable for Part 111/RCRA corrective actions and closures.

- Replacement of the industrial, commercial, recreational and other land use based categories with a single nonresidential category. The statute adopted the industrial criteria as nonresidential criteria until new nonresidential criteria are developed in new rules.
- Additions to the definition of "background" that include "typical ranges" from the statewide soil survey (Michigan Background Soil Survey, MDEQ, 2005) that may not represent levels at or regionally proximate to the site as detailed in Item 2 of Attachment A. Note that the MDEQ has significant concerns with this addition.
- The content of §324.20120b has been changed. Previously this section addressed requirements for land use and resource use restrictions (e.g., restrictive covenants and other institutional controls), legally enforceable agreements, monitoring, operation and maintenance, financial assurance, and permanent markers. It now identifies options for numeric and nonnumeric site-specific criteria. The previous requirements in this section are now in several new sections that are not applicable to Part 111/RCRA corrective action as detailed in Item 3 of Attachment A.
- Many additional options are now available to demonstrate compliance for contaminated groundwater venting to surface water as detailed in Item 4 of Attachment A.
- Many of the Part 201 rules have been rescinded and most of the remaining rules will be rescinded as of December 31, 2013, including the cleanup criteria rules. The only rules that will remain are some that cover due care. The current Part 7 cleanup criteria rules that were promulgated in 2002 will be repromulgated before the end of the calendar year with minor

changes so rules/criteria will be in place once the legislative rescission occurs at the end of the year. The minor changes will not include updates of toxicity, exposure, fate or transport information, and therefore, may not reflect the current state of the science.

### **Request for Review by October 7, 2013**

As noted above, there will be additional statutory changes to Part 201 yet this calendar year. The MDEQ, Office of Waste Management and Radiological Protection (OWMRP) has an opportunity to identify any Part 201 statutory provisions that are a concern for application to Part 111/RCRA corrective action by October 8, 2013 for potential clarification or repair as part of the legislative process.

**Given this opportunity, I would appreciate it if your staff could identify any concerns that they have for any of the current Part 201 statutory provisions by noon on Monday, October 7, 2013.**

If USEPA Region 5 staff would like to discuss any of the Part 201 statutory provisions, I will be happy to make the appropriate MDEQ staff available.

I apologize for the short notice and tight deadline, but we do not control the calendar on this issue.

### **Part 201 Cleanup Criteria Rules Update and Request for Future EPA Review**

We are requesting that EPA Region 5 review and evaluate the proposed Part 201 draft cleanup criteria rules for continued use at RCRA/Part 111 corrective action sites in Michigan when the proposed rules become available later this year.

The MDEQ has been engaged in several iterations of stakeholder meetings to develop new cleanup criteria rules. To date, there has not been sufficient stakeholder support to move forward with major updates to these rules. As noted above, the current Part 7 cleanup criteria rules that were promulgated in 2002 will be repromulgated with minor changes so rules will be in place once the legislative rescission occurs at the end of the year. These minor changes will not include updates of toxicity, exposure, fate or transport information and, therefore, may not reflect the current state of the science. The MDEQ intends to restart the stakeholder process so that the cleanup criteria can be updated with new toxicity, exposure, fate, and transport information as soon as possible.

Since the MDEQ intends to continue to use the Part 201 cleanup criteria for Part 111/RCRA corrective action per the MOU, we are requesting that the EPA Region 5 engage in reviewing the draft rules concurrent with the restarted stakeholder process. This will help to ensure that the final product meets Michigan's and EPA's corrective action authorization needs. Although the final stakeholder process has not been identified, we would propose to provide the draft rules to EPA Region 5 at the same time that the draft rules are provided to (or developed with) the stakeholders. EPA's timely review and feedback on these draft rules will make the stakeholders aware of any changes necessary to address the EPA's concerns and allow us to attempt to address these concerns during the stakeholder process.

Please let us know if this approach is acceptable. We recognize that it will take significant staff commitment and resources on tight timelines. If this approach does not work for the EPA Region 5, please propose an alternative process for this review.

### **Summary**



This notification summarizes statutory changes to Part 201 that influence Part 111/RCRA corrective action and provides an update on the cleanup criteria rules revision process.

The MDEQ is asking that USEPA identify any concerns with the identified statutory changes by Monday, October 7, 2013, in order to identify further statutory changes necessary for Part 201 this year. If USEPA Region 5 staff would like to discuss any statutory amendments between now and October 7, MDEQ will make appropriate staff available for that discussion.

The MDEQ is proposing a process for the USEPA Region 5 to review proposed changes to the Part 201 cleanup criteria rules. Please let us know if that process is acceptable or if the USEPA has a different process to propose to the MDEQ.

If you have any questions, please contact Deb MacKenzie-Taylor at 517-284-6563 or [mackenzie-taylor@michigan.gov](mailto:mackenzie-taylor@michigan.gov), or you may contact me. Please see Attachment A below.

Thank you,  
DeLores (De) Montgomery, Chief  
Hazardous Waste Section  
Office of Waste Management and Radiological Protection  
Michigan Department of Environmental Quality  
PO Box 30241  
Lansing, MI 48909-7741

For Overnight Mail or Hand Delivery:  
Constitution Hall - new location 4<sup>th</sup> floor South  
525 West Allegan Street  
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517-373-4797(fax) *Effective August 12, 2013 my new number is (517) 284-6565*  
[montgomeryd1@michigan.gov](mailto:montgomeryd1@michigan.gov)

## **Attachment A**

### **More Details on Part 201 Statutory Amendments that Influence Part 111/RCRA Corrective Action**

1. §324.20120a was amended both in 2010 and 2012 as follows:
  - Replaced the industrial, commercial, recreational and other land use based categories with a single nonresidential category that adopted the industrial criteria until new nonresidential criteria are developed in new rules.
  - Replaced some rule references with direct language.
  - Added a provision for documenting when target detection limits cannot be achieved based on facility specific conditions.
  - Required the MDEQ to evaluate and revise the cleanup criteria rules by December 31, 2013, when the current Part 201 Part 7 cleanup criteria administrative rules are to be rescinded, as well as all of the other Part 201 rules that are still in effect. Most of the other Part 201 rules were rescinded in 2010 or 2012.

- Added §324.20120a(19) to allow compliance with indoor air inhalation criteria through compliance with MIOSHA for manufacturing facilities (North American Industry Classification System Sectors 31-33) applicable to exposure to the hazardous substance including, but not limited to, the occupational health standards for air contaminants and hazard communication.
2. §324.20101(1)(e) amendments in 2012 added provisions to the definition of “background concentration” to allow use of:
- Statewide default levels (previously in the criteria rules tables),
  - Typical ranges published in the MDEQ’s 2005 Michigan Background Soil Survey,
  - Typical ranges published in any other study or survey conducted or approved by the department, or
  - A site specific demonstration (also previously used).

We want to note that the definition includes “the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility.” There should be great caution used if someone is proposing values for a hazardous substance (e.g. arsenic) based on the MDEQ’s 2005 Michigan Background Soil Survey or other study or survey conducted or approved by the department. A “typical range” based on combined statewide data is not necessarily appropriate for site-specific application. For example, we have had calls regarding misapplication of the 27.7 ppm from Table 1 and 88 ppm from Table 4 for arsenic in areas of the state where the typical back ground levels are much lower (e.g., 97.5%tile <7 ppm). We highly recommend having staff receiving such a proposal consult with our expert on this background dataset, Dave Slayton at 517-284-6571 or [slaytond@michigan.gov](mailto:slaytond@michigan.gov).

3. The 2010 amendments changed the previous §324.20120b section that used to have requirements for cleanups involving nonresidential land use criteria, limited, and site specific categories that included restrictive covenants or other institutional controls, monitoring, operation and maintenance, financial assurance, permanent markers, and legally enforceable agreements. §324.20120b no longer covers these requirements. These types of requirements from have been moved to new sections §324.20114a, §324.20114b, §324.20114c, and §324.20114d. However, these new sections, as well as §324.20114e and §324.20114f (2012) do not apply to Part 111/RCRA corrective action since §324.20114 does not apply and Part 111/RCRA corrective action is exempt from Part 201 liability provisions in §324.20126(4)(a) due to the alternate liability requirements of Part 111/RCRA.

The 2010 and 2012 amendments to §324.20120b have altered this section to require the MDEQ to approve numeric and nonnumeric site-specific criteria that meet the requirements of this section in lieu of the use of generic criteria.

4. §324.20120e was added as part of the 2010 statutory amendments to address groundwater venting to surface water instead of through administrative rules. This section was further amended in 2012. Some of these provisions include:

- Allowing variances from surface water quality standards as provided for other surface water discharges under Part 31 in subsection (1)(b),
  - Allows site-specific criteria including biological criteria in subsection (1)(d),
  - Allowing ecological demonstrations in subsection (1)(e) with the requirements for the demonstration in subsection (9),
  - Allowing modeling demonstrations in subsection (1)(f) with the requirements for the demonstration in subsection (10),
  - Includes factors to be considered in determining if the pathway is relevant in subsections (3) and (4) including not requiring GSI monitoring wells if other information is sufficient to determine the pathway is not relevant and allowing fate and transport modeling to support professional judgment,
  - Provides specific circumstances where alternative monitoring points are allowed in subsection (8),
  - In subsection (13) there are different requirements (e.g., time frames) for acute toxicity exceedances than those required under Part 111 administrative rules for corrective action (R 299.9629(7)),
  - Allows for a demonstration of no or de minimis effect under subsection (14) with a 90-day limit for the MDEQ review or the demonstration is automatically approved,
  - Allows for a technical impracticability waiver in subsection (15) with a 180-day limit for the MDEQ review or the demonstration is automatically approved,
  - Allows for a demonstration of natural attenuation as an acceptable form of remediation in subsection (16) without specific requirements for confirmation monitoring,
  - Subsection (19) provides for specific requirements for contaminated groundwater that enters a sewer system that discharges to surface water including identifying the compliance point at the outfall for the sewer system, and
  - Provides for retroactive application in subsection (21).
5. §324.20107a amendments (2010) added due care obligations to owners of contaminated property (includes properties subject to Part 111/RCRA corrective action) as follows:
- Provide reasonable cooperation, assistance and access,
  - Comply with any land use or resource use restrictions,
  - Not impede effectiveness or integrity of any land use or resource use restrictions, and
  - Makes due care obligations based on current numeric cleanup criteria

Also §324.20114g was added in 2012 which provides for approval by the MDEQ of documentation of due care compliance.

6. Amendments to the definition of facility in §324.20101(1)(r) allow for the use of site specific criteria approved by the department that do not require land use or resource use restrictions in lieu of generic residential criteria. This amendment assisted with moving forward on the Midland Area Soils corrective action.
7. §324.20101(1)(mm) Definition of release exempting relocation of soil pursuant to 20120c which has also be revised (2012).

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

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For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

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**From:** Montgomery, Delores (DEQ) [mailto:MONTGOMERYD1@michigan.gov]  
**Sent:** Tuesday, October 22, 2013 4:17 PM  
**To:** Cisneros, Jose  
**Subject:** RE: A question relating to the Part 201 Amendments

Joe,

Hopefully this will answer Ignacio's question.

Michigan's authorized RCRA corrective action rule (Part 111, Rule 629) is undergoing minor modifications that have been approved by the U.S. EPA Region 5 (check with Mary Setnicar). The most substantive change is the addition of environmental protection standards for indoor air. Minor changes are removing the word permit (as we now have a one-step Licensing process), updating ASTM standards, and changing the term "interim action" to "interim measure." A strike-bold copy of this rule is attached.

The notification we were sending regarding changes to Part 201 is separate from the updates to the Part 111 rules already approved by U.S. EPA Region 5. The Part 201 changes impact The Part 111/RCRA corrective action because Rule 629 refers to groundwater protection standards and environmental protection standards established pursuant to Part 201 if the limits are not less stringent than RCRA (see Rule 629(3) through (9) attached). The notification was for changes to Part 201 that may affect the groundwater and environmental protection standards established pursuant to Part 201 that are used for Part 111/RCRA corrective action in Michigan.

Please let me know if there are any additional questions or if we should set up a conference call.

DeLores (De) Montgomery, Chief  
Hazardous Waste Section  
Office of Waste Management and Radiological Protection  
Michigan Department of Environmental Quality  
PO Box 30241  
Lansing, MI 48909-7741

For Overnight Mail or Hand Delivery:  
Constitution Hall - new location 4<sup>th</sup> floor South  
525 West Allegan Street  
Lansing, MI 48933  
517-373-4797(fax) *Effective August 12, 2013 my new number is (517) 284-6565*  
[montgomeryd1@michigan.gov](mailto:montgomeryd1@michigan.gov)

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**From:** Cisneros, Jose [mailto:Cisneros.Jose@epa.gov]  
**Sent:** Monday, October 21, 2013 4:01 PM  
**To:** Montgomery, Delores (DEQ)  
**Subject:** A question relating to the Part 201 Amendments

Hi, De—

Can you answer Ignacio's question below (bolded and underlined)?

Thanks,

Joe

6-6945

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**From:** Arrazola, Ignacio

**Sent:** Monday, October 21, 2013 2:51 PM

**To:** Lodisio, Laura; Mangino, Mario

**Cc:** Cisneros, Jose

**Subject:** RE:

When we spoke with De Montgomery shortly before the shutdown, we were going to try to get Gary Westefer and Maria Gonzalez on the line with De's staff person that had more detailed knowledge of the changes. **One of the first questions I had was whether the rule changes include modifications to the state's authorized RCRA rules. Do we now know the answer to that question?**

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**From:** Lodisio, Laura

**Sent:** Monday, October 21, 2013 2:45 PM

**To:** Mangino, Mario

**Cc:** Cisneros, Jose; Arrazola, Ignacio

**Subject:**

Hi Mario,

I talked to Jose and he indicated he'd like to send our responses to Margaret in a briefing paper and let her decide how to respond to MDEQ. I have drafted the briefing paper (attached). If you can provide your responses to the items under "Summary", that would be helpful. Jose said he'd also offer a face-to-face briefing, if she would like one.

Thanks!

Laura

Laura L. Lodisio (LU-9J)

RCRA Land Reuse Coordinator

Remediation and Reuse Branch

Land and Chemicals Division

U.S. Environmental Protection Agency - Region 5

77 W. Jackson Blvd.

Chicago, IL 60604

Phone: (312) 886-7090

---

**From:** Montgomery, Delores (DEQ) [<mailto:MONTGOMERYD1@michigan.gov>]  
**Sent:** Friday, October 18, 2013 9:43 AM  
**To:** Cisneros, Jose  
**Cc:** Mangino, Mario; Rudloff, Gregory; [brownee@michigan.gov](mailto:brownee@michigan.gov); [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov)  
**Subject:** Follow-up - Michigan Corrective Action MOU Notification; Request for Review

Joe-

**Welcome back.**

I wanted to update you on the Part 201 amendments that we had asked for comments on by October 7 in the e-mail from September 24, 2013. Just wanted to let you know we still have an opportunity to provide input for some updates to Part 201 before a meeting on October 28<sup>th</sup>. We do not need a formal response at this time, but if you or your staff would share any thoughts, concerns, or comments on the statutory changes to Part 201 by Thursday, October 24 or no later than noon Friday, October 25, that would help us prepare for the October 28<sup>th</sup> deadline. We would be happy to schedule a conference call to discuss the changes with you and/or your staff at your convenience.

Let me know if you have any questions.

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**From:** Montgomery, Delores (DEQ) [mailto:MONTGOMERYD1@michigan.gov]

**Sent:** Tuesday, September 24, 2013 2:16 PM

**To:** Cisneros, Jose

**Cc:** Mangino, Mario; Olsberg, Colleen; Sundar, Bhooma; Rudloff, Gregory; Little, Paul; Ramanauskas, Peter; Moore, Tammy; mackenzie-taylord@michigan.gov; Himich, Virginia (DEQ); Schinderle, Jack (DEQ); Slayton, David (DEQ); brownee@michigan.gov; Tyson, Kimberly (DEQ); Craig, John (DEQ)

**Subject:** Michigan Corrective Action MOU Notification; Requests for Review

**Importance:** High

Joe-

This email is intended to do three things:

- 1) Notify EPA of significant changes to the laws, regulations and guidance, and practices that impact the Part 201 clean-up criteria and processes with respect to their application to RCRA/Part 111 corrective action sites;
- 2) Request EPA review, by October 7, 2013, of the statutory changes to Part 201 and identification of issues of concern related to the application of Part 201 to RCRA/Part 111 corrective action;
- 3) Provide an update on the Part 201 rules process and request EPA's review and evaluation of the proposed Part 201 draft cleanup criteria rules for continued use at RCRA corrective action sites in Michigan. The rules are not yet available but may become available later this year.

## Notification

In accordance with the November 3, 2000, Memorandum of Understanding (MOU) and April 15, 2002, Technical Agreement (TA) this e-mail is to notify you of statutory changes to Part 201 that affect the use of Part 201 cleanup criteria for Part 111/RCRA corrective action.

The MOU and TA can be found at: [http://michigan.gov/deq/0,4561,7-135-3312\\_4118\\_4240-56396--00.html](http://michigan.gov/deq/0,4561,7-135-3312_4118_4240-56396--00.html)

Amendments to the Part 201 statute were made in 2010 and 2012 that change the application of some cleanup criteria and rescind the current cleanup criteria rules as of December 31, 2013. This notification summarizes some of the key statutory changes that influence the application of the cleanup criteria to Part 111/RCRA corrective action projects. Attachment A (below) provides a



detailed outline of the statutory changes to Part 201 that influence Part 111/RCRA corrective action (including citations).

The most important Part 201 statutory changes that influence Part 111/RCRA Corrective Action include:

- Allowing compliance with indoor air criteria through compliance with occupational health regulations (MIOSHA) when the site is a manufacturing facility (North American Industry Classification System Sectors 31-33) and the MIOSHA regulation(s) are applicable to the exposure to the hazardous substance(s) including, but not limited to, the occupational health standards for air contaminants and hazard communication requirements. We understand that this is different from the approach that was previously discussed with EPA which was to only use occupational exposure limits for the Human Exposures Controlled Environmental Indicator, not for final corrective action or closure.

We need to know if the 201 change will be acceptable for Part 111/RCRA corrective actions and closures.

- Replacement of the industrial, commercial, recreational and other land use based categories with a single nonresidential category. The statute adopted the industrial criteria as nonresidential criteria until new nonresidential criteria are developed in new rules.
- Additions to the definition of "background" that include "typical ranges" from the statewide soil survey (Michigan Background Soil Survey, MDEQ, 2005) that may not represent levels at or regionally proximate to the site as detailed in Item 2 of Attachment A. Note that the MDEQ has significant concerns with this addition.
- The content of §324.20120b has been changed. Previously this section addressed requirements for land use and resource use restrictions (e.g., restrictive covenants and other institutional controls), legally enforceable agreements, monitoring, operation and maintenance, financial assurance, and permanent markers. It now identifies options for numeric and nonnumeric site-specific criteria. The previous requirements in this section are now in several new sections that are not applicable to Part 111/RCRA corrective action as detailed in Item 3 of Attachment A.
- Many additional options are now available to demonstrate compliance for contaminated groundwater venting to surface water as detailed in Item 4 of Attachment A.
- Many of the Part 201 rules have been rescinded and most of the remaining rules will be rescinded as of December 31, 2013, including the cleanup criteria rules. The only rules that will remain are some that cover due care. The current Part 7 cleanup criteria rules that were promulgated in 2002 will be repromulgated before the end of the calendar year with minor changes so rules/criteria will be in place once the legislative rescission occurs at the end of the year. The minor changes will not include updates of toxicity, exposure, fate or transport information, and therefore, may not reflect the current state of the science.

## **Request for Review by October 7, 2013**

As noted above, there will be additional statutory changes to Part 201 yet this calendar year. The MDEQ, Office of Waste Management and Radiological Protection (OWMRP) has an opportunity to identify any Part 201 statutory provisions that are a concern for application to Part 111/RCRA corrective action by October 8, 2013 for potential clarification or repair as part of the legislative process.

**Given this opportunity, I would appreciate it if your staff could identify any concerns that they have for any of the current Part 201 statutory provisions by noon on Monday, October 7, 2013.**

If USEPA Region 5 staff would like to discuss any of the Part 201 statutory provisions, I will be happy to make the appropriate MDEQ staff available.

I apologize for the short notice and tight deadline, but we do not control the calendar on this issue.

## **Part 201 Cleanup Criteria Rules Update and Request for Future EPA Review**

We are requesting that EPA Region 5 review and evaluate the proposed Part 201 draft cleanup criteria rules for continued use at RCRA/Part 111 corrective action sites in Michigan when the proposed rules become available later this year.

The MDEQ has been engaged in several iterations of stakeholder meetings to develop new cleanup criteria rules. To date, there has not been sufficient stakeholder support to move forward with major updates to these rules. As noted above, the current Part 7 cleanup criteria rules that were promulgated in 2002 will be repromulgated with minor changes so rules will be in place once the legislative rescission occurs at the end of the year. These minor changes will not include updates of toxicity, exposure, fate or transport information and, therefore, may not reflect the current state of the science. The MDEQ intends to restart the stakeholder process so that the cleanup criteria can be updated with new toxicity, exposure, fate, and transport information as soon as possible.

Since the MDEQ intends to continue to use the Part 201 cleanup criteria for Part 111/RCRA corrective action per the MOU, we are requesting that the EPA Region 5 engage in reviewing the draft rules concurrent with the restarted stakeholder process. This will help to ensure that the final product meets Michigan's and EPA's corrective action authorization needs. Although the final stakeholder process has not been identified, we would propose to provide the draft rules to EPA Region 5 at the same time that the draft rules are provided to (or developed with) the stakeholders. EPA's timely review and feedback on these draft rules will make the stakeholders aware of any changes necessary to address the EPA's concerns and allow us to attempt to address these concerns during the stakeholder process.

Please let us know if this approach is acceptable. We recognize that it will take significant staff commitment and resources on tight timelines. If this approach does not work for the EPA Region 5, please propose an alternative process for this review.

## **Summary**

This notification summarizes statutory changes to Part 201 that influence Part 111/RCRA corrective action and provides an update on the cleanup criteria rules revision process.

The MDEQ is asking that USEPA identify any concerns with the identified statutory changes by Monday, October 7, 2013, in order to identify further statutory changes necessary for Part 201 this year. If USEPA Region 5 staff would like to discuss any statutory amendments between now and October 7, MDEQ will make appropriate staff available for that discussion.

The MDEQ is proposing a process for the USEPA Region 5 to review proposed changes to the Part 201 cleanup criteria rules. Please let us know if that process is acceptable or if the USEPA has a different process to propose to the MDEQ.

If you have any questions, please contact Deb MacKenzie-Taylor at 517-284-6563 or [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov), or you may contact me. Please see Attachment A below.

Thank you,  
DeLores (De) Montgomery, Chief  
Hazardous Waste Section  
Office of Waste Management and Radiological Protection  
Michigan Department of Environmental Quality  
PO Box 30241  
Lansing, MI 48909-7741

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[montgomeryd1@michigan.gov](mailto:montgomeryd1@michigan.gov)

## **Attachment A**

### **More Details on Part 201 Statutory Amendments that Influence Part 111/RCRA Corrective Action**

1. §324.20120a was amended both in 2010 and 2012 as follows:
  - Replaced the industrial, commercial, recreational and other land use based categories with a single nonresidential category that adopted the industrial criteria until new nonresidential criteria are developed in new rules.
  - Replaced some rule references with direct language.
  - Added a provision for documenting when target detection limits cannot be achieved based on facility specific conditions.
  - Required the MDEQ to evaluate and revise the cleanup criteria rules by December 31, 2013, when the current Part 201 Part 7 cleanup criteria administrative rules are to be rescinded, as well as all of the other Part 201 rules that are still in effect. Most of the other Part 201 rules were rescinded in 2010 or 2012.
  - Added §324.20120a(19) to allow compliance with indoor air inhalation criteria through compliance with MIOSHA for manufacturing facilities (North American Industry Classification System Sectors 31-33) applicable to exposure to the hazardous substance

including, but not limited to, the occupational health standards for air contaminants and hazard communication.

2. §324.20101(1)(e) amendments in 2012 added provisions to the definition of “background concentration” to allow use of:

- Statewide default levels (previously in the criteria rules tables),
- Typical ranges published in the MDEQ’s 2005 Michigan Background Soil Survey,
- Typical ranges published in any other study or survey conducted or approved by the department, or
- A site specific demonstration (also previously used).

We want to note that the definition includes “the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility.” There should be great caution used if someone is proposing values for a hazardous substance (e.g. arsenic) based on the MDEQ’s 2005 Michigan Background Soil Survey or other study or survey conducted or approved by the department. A “typical range” based on combined statewide data is not necessarily appropriate for site-specific application. For example, we have had calls regarding misapplication of the 27.7 ppm from Table 1 and 88 ppm from Table 4 for arsenic in areas of the state where the typical back ground levels are much lower (e.g., 97.5%tile <7 ppm). We highly recommend having staff receiving such a proposal consult with our expert on this background dataset, Dave Slayton at 517-284-6571 or [slaytond@michigan.gov](mailto:slaytond@michigan.gov).

3. The 2010 amendments changed the previous §324.20120b section that used to have requirements for cleanups involving nonresidential land use criteria, limited, and site specific categories that included restrictive covenants or other institutional controls, monitoring, operation and maintenance, financial assurance, permanent markers, and legally enforceable agreements. §324.20120b no longer covers these requirements. These types of requirements from have been moved to new sections §324.20114a, §324.20114b, §324.20114c, and §324.20114d. However, these new sections, as well as §324.20114e and §324.20114f (2012) do not apply to Part 111/RCRA corrective action since §324.20114 does not apply and Part 111/RCRA corrective action is exempt from Part 201 liability provisions in §324.20126(4)(a) due to the alternate liability requirements of Part 111/RCRA.

The 2010 and 2012 amendments to §324.20120b have altered this section to require the MDEQ to approve numeric and nonnumeric site-specific criteria that meet the requirements of this section in lieu of the use of generic criteria.

4. §324.20120e was added as part of the 2010 statutory amendments to address groundwater venting to surface water instead of through administrative rules. This section was further amended in 2012. Some of these provisions include:

- Allowing variances from surface water quality standards as provided for other surface water discharges under Part 31 in subsection (1)(b),
- Allows site-specific criteria including biological criteria in subsection (1)(d),

- Allowing ecological demonstrations in subsection (1)(e) with the requirements for the demonstration in subsection (9),
  - Allowing modeling demonstrations in subsection (1)(f) with the requirements for the demonstration in subsection (10),
  - Includes factors to be considered in determining if the pathway is relevant in subsections (3) and (4) including not requiring GSI monitoring wells if other information is sufficient to determine the pathway is not relevant and allowing fate and transport modeling to support professional judgment,
  - Provides specific circumstances where alternative monitoring points are allowed in subsection (8),
  - In subsection (13) there are different requirements (e.g., time frames) for acute toxicity exceedances than those required under Part 111 administrative rules for corrective action (R 299.9629(7)),
  - Allows for a demonstration of no or de minimis effect under subsection (14) with a 90-day limit for the MDEQ review or the demonstration is automatically approved,
  - Allows for a technical impracticability waiver in subsection (15) with a 180-day limit for the MDEQ review or the demonstration is automatically approved,
  - Allows for a demonstration of natural attenuation as an acceptable form of remediation in subsection (16) without specific requirements for confirmation monitoring,
  - Subsection (19) provides for specific requirements for contaminated groundwater that enters a sewer system that discharges to surface water including identifying the compliance point at the outfall for the sewer system, and
  - Provides for retroactive application in subsection (21).
5. §324.20107a amendments (2010) added due care obligations to owners of contaminated property (includes properties subject to Part 111/RCRA corrective action) as follows:
- Provide reasonable cooperation, assistance and access,
  - Comply with any land use or resource use restrictions,
  - Not impede effectiveness or integrity of any land use or resource use restrictions, and
  - Makes due care obligations based on current numeric cleanup criteria

Also §324.20114g was added in 2012 which provides for approval by the MDEQ of documentation of due care compliance.

6. Amendments to the definition of facility in §324.20101(1)(r) allow for the use of site specific criteria approved by the department that do not require land use or resource use restrictions in

lieu of generic residential criteria. This amendment assisted with moving forward on the Midland Area Soils corrective action.

7. §324.20101(1)(mm) Definition of release exempting relocation of soil pursuant to 20120c which has also be revised (2012).

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**From:** Cisneros, Jose

**Sent:** Friday, October 25, 2013 3:12 PM

**To:** [MontgomeryD1@michigan.gov](mailto:MontgomeryD1@michigan.gov)

**Cc:** Mangino, Mario; Olsberg, Colleen; Sundar, Bhooma; Rudloff, Gregory; Little, Paul; Ramanauskas, Peter; Moore, Tammy; [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov); Himich, Virginia (DEQ); Schinderle, Jack (DEQ); Slayton, David (DEQ); [brownee@michigan.gov](mailto:brownee@michigan.gov); Tyson, Kimberly (DEQ); Craig, John (DEQ); Arrazola, Ignacio; Gonzalez, Maria; Victorine, Gary

**Subject:** RE: Michigan Corrective Action MOU Notification; Requests for Review

Hi, De—

Thank you for email, notifying us of the changes to the Michigan Part 201 cleanup criteria and processes.

As requested, we have reviewed the materials you provided to us and assessed them based on our federal program requirements and policy. We have developed the comments found in the attachment. Please note that Region 5's comments are preliminary in nature given the time constraints involved and are based solely on the summary information provided by MDEQ. The Region has not yet reviewed the actual state statutory and regulatory language. In addition, the Region's preliminary review and comment do not supplant any required authorization process to the extent applicable.

Please feel free to contact us with questions on our comments and with any additional materials/information that you would like us to review on this subject.

Sincerely,

Joe

Jose Cisneros, Chief

Remediation and Reuse Branch

Land and Chemicals Division

EPA Region 5

312-886-6945

---

**From:** Montgomery, Delores (DEQ) [<mailto:MONTGOMERYD1@michigan.gov>]

**Sent:** Tuesday, September 24, 2013 2:16 PM

**To:** Cisneros, Jose

**Cc:** Mangino, Mario; Olsberg, Colleen; Sundar, Bhooma; Rudloff, Gregory; Little, Paul; Ramanauskas, Peter; Moore, Tammy; [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov); Himich, Virginia (DEQ); Schinderle, Jack (DEQ); Slayton, David (DEQ); [brownee@michigan.gov](mailto:brownee@michigan.gov); Tyson, Kimberly (DEQ); Craig, John (DEQ)

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**Importance:** High

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Thank you,  
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## Attachment A

### More Details on Part 201 Statutory Amendments that Influence Part 111/RCRA Corrective Action

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We want to note that the definition includes “the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility.” There should be great caution used if someone is proposing values for a hazardous substance (e.g. arsenic) based on the MDEQ’s 2005 Michigan Background Soil Survey or other study or survey conducted or approved by the department. A “typical range” based on combined statewide data is not necessarily appropriate for site-specific application. For example, we have had calls regarding misapplication of the 27.7 ppm from Table 1 and 88 ppm from Table 4 for arsenic in areas of the state where the typical back ground levels are much lower (e.g., 97.5%tile <7 ppm). We

highly recommend having staff receiving such a proposal consult with our expert on this background dataset, Dave Slayton at 517-284-6571 or [slaytond@michigan.gov](mailto:slaytond@michigan.gov).

3. The 2010 amendments changed the previous §324.20120b section that used to have requirements for cleanups involving nonresidential land use criteria, limited, and site specific categories that included restrictive covenants or other institutional controls, monitoring, operation and maintenance, financial assurance, permanent markers, and legally enforceable agreements. §324.20120b no longer covers these requirements. These types of requirements from have been moved to new sections §324.20114a, §324.20114b, §324.20114c, and §324.20114d. However, these new sections, as well as §324.20114e and §324.20114f (2012) do not apply to Part 111/RCRA corrective action since §324.20114 does not apply and Part 111/RCRA corrective action is exempt from Part 201 liability provisions in §324.20126(4)(a) due to the alternate liability requirements of Part 111/RCRA.

The 2010 and 2012 amendments to §324.20120b have altered this section to require the MDEQ to approve numeric and nonnumeric site-specific criteria that meet the requirements of this section in lieu of the use of generic criteria.

4. §324.20120e was added as part of the 2010 statutory amendments to address groundwater venting to surface water instead of through administrative rules. This section was further amended in 2012. Some of these provisions include:
  - Allowing variances from surface water quality standards as provided for other surface water discharges under Part 31 in subsection (1)(b),
  - Allows site-specific criteria including biological criteria in subsection (1)(d),
  - Allowing ecological demonstrations in subsection (1)(e) with the requirements for the demonstration in subsection (9),
  - Allowing modeling demonstrations in subsection (1)(f) with the requirements for the demonstration in subsection (10),
  - Includes factors to be considered in determining if the pathway is relevant in subsections (3) and (4) including not requiring GSI monitoring wells if other information is sufficient to determine the pathway is not relevant and allowing fate and transport modeling to support professional judgment,
  - Provides specific circumstances where alternative monitoring points are allowed in subsection (8),
  - In subsection (13) there are different requirements (e.g., time frames) for acute toxicity exceedances than those required under Part 111 administrative rules for corrective action (R 299.9629(7)),
  - Allows for a demonstration of no or de minimis effect under subsection (14) with a 90-day limit for the MDEQ review or the demonstration is automatically approved,

- Allows for a technical impracticability waiver in subsection (15) with a 180-day limit for the MDEQ review or the demonstration is automatically approved,
  - Allows for a demonstration of natural attenuation as an acceptable form of remediation in subsection (16) without specific requirements for confirmation monitoring,
  - Subsection (19) provides for specific requirements for contaminated groundwater that enters a sewer system that discharges to surface water including identifying the compliance point at the outfall for the sewer system, and
  - Provides for retroactive application in subsection (21).
5. §324.20107a amendments (2010) added due care obligations to owners of contaminated property (includes properties subject to Part 111/RCRA corrective action) as follows:
- Provide reasonable cooperation, assistance and access,
  - Comply with any land use or resource use restrictions,
  - Not impede effectiveness or integrity of any land use or resource use restrictions, and
  - Makes due care obligations based on current numeric cleanup criteria

Also §324.20114g was added in 2012 which provides for approval by the MDEQ of documentation of due care compliance.

6. Amendments to the definition of facility in §324.20101(1)(r) allow for the use of site specific criteria approved by the department that do not require land use or resource use restrictions in lieu of generic residential criteria. This amendment assisted with moving forward on the Midland Area Soils corrective action.
7. §324.20101(1)(mm) Definition of release exempting relocation of soil pursuant to 20120c which has also be revised (2012).

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**From:** Cisneros, Jose  
**Sent:** Monday, October 21, 2013 3:01 PM  
**To:** [MontgomeryD1@michigan.gov](mailto:MontgomeryD1@michigan.gov)  
**Subject:** A question relating to the Part 201 Amendments

Hi, De—

Can you answer Ignacio's question below (bolded and underlined)?

Thanks,

Joe

6-6945

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**From:** Arrazola, Ignacio  
**Sent:** Monday, October 21, 2013 2:51 PM  
**To:** Lodisio, Laura; Mangino, Mario  
**Cc:** Cisneros, Jose  
**Subject:** RE:

When we spoke with De Montgomery shortly before the shutdown, we were going to try to get Gary Westefer and Maria Gonzalez on the line with De's staff person that had more detailed knowledge of the changes. **One of the first questions I had was whether the rule changes include modifications to the state's authorized RCRA rules. Do we now know the answer to that question?**

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**From:** Lodisio, Laura  
**Sent:** Monday, October 21, 2013 2:45 PM  
**To:** Mangino, Mario  
**Cc:** Cisneros, Jose; Arrazola, Ignacio  
**Subject:**

Hi Mario,

I talked to Jose and he indicated he'd like to send our responses to Margaret in a briefing paper and let her decide how to respond to MDEQ. I have drafted the briefing paper (attached). If you can provide your responses to the items under "Summary", that would be helpful. Jose said he'd also offer a face-to-face briefing, if she would like one.

Thanks!

Laura

Laura L. Lodisio (LU-9J)  
RCRA Land Reuse Coordinator

Remediation and Reuse Branch  
Land and Chemicals Division  
U.S. Environmental Protection Agency - Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Phone: (312) 886-7090

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**From:** Cisneros, Jose  
**Sent:** Monday, October 21, 2013 2:59 PM  
**To:** [MontgomeryD1@michigan.gov](mailto:MontgomeryD1@michigan.gov)  
**Cc:** Mangino, Mario; Rudloff, Gregory; [brownee@michigan.gov](mailto:brownee@michigan.gov); [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov); Lodisio, Laura; Arrazola, Ignacio; Moore, Tammy  
**Subject:** RE: Follow-up - Michigan Corrective Action MOU Notification; Request for Review

Hi, De—

We are back and trying to catch up. I have Mario Mangino working on pulling together comments on the 5 items you highlighted on the Part 201 amendments. We are hoping to get your comments by Wed or Thursday of this week. We are trying to get our comments in front of Margaret Guerriero, and will ask her if she would like us to send our comments as informal or formal. Once we have briefed Margaret and the comments are in the desired form, I will let you know and send them on.

I hope that will fit your schedule.

Thanks,

Joe

Jose Cisneros, Chief  
Remediation and Reuse Branch  
Land and Chemicals Division  
EPA Region 5  
312-886-6945

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**From:** Montgomery, Delores (DEQ) [<mailto:MONTGOMERYD1@michigan.gov>]  
**Sent:** Friday, October 18, 2013 9:43 AM  
**To:** Cisneros, Jose  
**Cc:** Mangino, Mario; Rudloff, Gregory; [brownee@michigan.gov](mailto:brownee@michigan.gov); [mackenzie-taylord@michigan.gov](mailto:mackenzie-taylord@michigan.gov)  
**Subject:** Follow-up - Michigan Corrective Action MOU Notification; Request for Review

Joe-

**Welcome back.**

I wanted to update you on the Part 201 amendments that we had asked for comments on by October 7 in the e-mail from September 24, 2013. Just wanted to let you know we still have an opportunity to provide input for some updates to Part 201 before a meeting on October 28<sup>th</sup>. We do not need a formal response at this time, but if you or your staff would share any thoughts, concerns, or comments on the statutory changes to Part 201 by Thursday, October 24 or no later than noon Friday, October 25, that would help us prepare for the October 28<sup>th</sup> deadline. We would be happy to schedule a conference call to discuss the changes with you and/or your staff at your convenience.



Let me know if you have any questions.

DeLores (De) Montgomery, Chief  
Hazardous Waste Section  
Office of Waste Management and Radiological Protection  
Michigan Department of Environmental Quality  
PO Box 30241  
Lansing, MI 48909-7741

For Overnight Mail or Hand Delivery:  
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525 West Allegan Street  
Lansing, MI 48933

517-373-4797(fax) *Effective August 12, 2013 my new number is (517) 284-6565*  
[montgomeryd1@michigan.gov](mailto:montgomeryd1@michigan.gov)